Supreme Court, U.S.
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No. 05-5105 JUL 13 - 2005
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IN THE

Supreme Court of the United States

NATHANIEL SWINT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether The Court of Appeals for The Third Circuit's May 11th, 2005 Order Absent The Guidance of This Court's Most Recent Decisions Correcting The Interpretation of 28 U.S.C. § 2255 ¶6(3) and Rule 60(b) of The Federal Rules of Civil Procedure Should Continue to Stand as an Outstanding Fugitive Decision Administering Federal Law/ Rule?

2. Whether The Court of Appeals For The Third Circuit's Local Rule 22.2 Conflicts With The Established National Rule 22(b) of The Federal Rules of Appellate Procedure in Violation of Rule 47 of The Same Rules? And, if so:

a. It Follows Then Also That The May 11, 2005 Order Denying a Certificate of Appealability Was Partially Based Upon The Rule 47 Violation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays (to Allah) that a Writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was February 17, 2005. A timely petition for rehearing was denied by the United States Court of Appeals on the following date May 11, 2005, and a copy of the order denying rehearing appears at Appendix C. An extension of time to file the petition for a writ of certiorari was granted to and including October 8, 2005 on August 2, 2005, in Application No. 05A116.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution:

Article III, Section 2, Cl. [1]

Fifth Amendment, Due Process Clause

Statutes:

28 U.S.C. § 1254(1)
28 U.S.C. § 2241
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28 U.S.C. § 2255(4)

STATEMENT OF THE CASE

This case involves the incorrect administration by the lower courts of 28 U.S.C. § 2255¶(3) and ¶8(2)'s interplay before *Dodd v. United States*, 1/ clarification of ¶6(3)'s provision to have embraced, i.e., "the limitation period in ¶6(3) applies to 'all motions' under § 2255, initial motions as well as second or successive ones." In addition, the clarification of Rule 60(b) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") enunciated in *Gonzalez v. Crosby*, 2/ which held because petitioner's Rule 60(b) motion challenged only the District Court's previous ruling on AEDPA's statute of limitations, it is not the equivalent of a successive habeas petition and can be ruled upon by the District Court without precertification by the Eleventh Circuit. Prior to the Gonzalez case most circuit courts used

a categoric approach to Rule 60(b) motions as a second or successive motion subject to 28 U.S.C. § 2244. The Third Circuit's precedent rationalizing from its in banc decision that under 28 U.S.C. § 2253(c) it lacked jurisdiction on nonconstitutional claims to issue a certificate of appealability ("COA"). Petitioner would be denied a COA because the district court believed even after reopening the July 17, 2000 Judgment, Petitioner would still have to seek authorization under 28 U.S.C. § 2244(b)(3). As a result, the district court would simultaneously dismiss the Rule 60(b) motion and COA. The Dodd decision corrects this improper judicial construction of all second or successive motions and Gonzalez, likewise, corrects the improper judicial construction of Rule 60(b). The following procedural events occurred in the lower courts contrary to Dodd and Gonzalez as follows:

1. On June 23, 2004, Petitioner invoked the district court's discretion under Rule 60(b), and 61, Fed. R. Civ. P., accompanied by an affidavit. That is, in light of this Court's decisions in *Wiggins v. Smith* 3/ and *Massaro v. United States*.

1/ Case No. 04-5286, U.S. Supreme Court (Decided 6/20/05).

2/ Case No. 04-6432, U.S. Supreme Court (Decided 6/23/05).

3/ 539 U.S. __, 156 L. Ed. 2d 471, 123 S. Ct. __ (2003).

4/ 538 U.S. 500, 155 L. Ed. 2d 714, 123 S. Ct. 1690 (2003).